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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Marjorie B. Medina

Serial No.: 09/832,211

Examiner: B. Carrillo

Filed: 10 April 2001

Group Art Unit: 1746

For: Method of detaching microorganisms from, or of inhibiting microbial attachment to, animal or poultry carcasses or seafood or parts thereof

REPLY BRIEF PURSUANT TO 37 C.F.R. SECTION 1.193

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellant respectfully submits that this Reply Brief is necessary in order to respond to the Examiner's Answer of 2 October 2003.

Appellant again notes that it is well settled that the initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention on any ground is always upon the Examiner. *Ex part Parks*, 30 USPQ2d 1234, 1236 (BPAI 1994); *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). A decision as to whether a claim is invalid under 35 U.S.C. Section 112, second paragraph requires a determination whether those skilled in the art would understand what is claimed. *Amgen Inc. v. Chugai Pharmaceutical Co.*, 18 USPQ2d 1016, 1030 (Fed. Cir. 1991).

The Examiner has utterly failed to show that those skilled in the art would not understand what is claimed by the use of the term "Tween." A mere cursory search of the internet found two

companies (Sigma-Aldrich and Uniqema) that sell various Tweens (see attached printouts); both companies describe various Tweens and give the physical characteristics for these compounds. That these compounds are well known in the art is also evidenced by 248 U.S. patents containing the term "Tween" in their claims, a point which the Examiner refuses to address as it concerns those skilled in the art (note especially column 2, lines 47-50 and claim 8 in U.S. Patent 6,562,366, copy attached). In fact, a mere cursory search of post-1976 patents on the U.S. Patent and Trademark Office website shows that 6752 patents containing the term "tween" and "surfactant" in their specifications (note especially column 5, lines 6-15 of U.S. Patent 6,623,761 and column 6, lines 2-5 of U.S. Patent 6,630,121, copies attached). Thus the evidence clearly shows that it simply cannot be argued that a person skilled in the art would not readily understand the term "Tween."

Furthermore, it is well settled that the disclosure of an application embraces not only what is expressly set forth in words or drawings, but what would be understood by persons skilled in the art. *In re Howarth*, 210 USPQ 689, 692 (CCPA 1981).

Thus the Examiner has failed to present a *prima facie* basis to deny patentability to the claimed invention since the Examiner has failed to show that those skilled in the art would not understand what is claimed.

Reversal of the Final Rejection of the Examiner by the Board of Patent Appeals and Interferences is therefore respectfully requested.

Please charge any required fees pertaining to this Reply Brief to the Deposit Account of  
the undersigned, No. 50-2134, and credit any overpayment to said Account.

Respectfully submitted,  
By: G. Byron Stover  
G. Byron Stover  
PTO Reg. No. 34,737  
USDA-ARS-OTT  
5601 Sunnyside Ave.  
Room 4-1194  
Beltsville, MD 20705-5131  
Telephone: (301)504-4783

Date: 8 October 2003



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SEARCH

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**Your search for Full Text: TWEEN****Was found in 87 documents.**

- PQ0111 **ProteoQwest™ Colorimetric Western Blotting Kit, BCIP/NBT Substrate for Mouse Monoclonal IgG Antibodies**
- T9573 **Anti-phospho-Tyrosine Hydroxylase (pSer<sup>40</sup>) antibody produced in rabbit**  
approx. 1 mg/mL, Buffered aqueous solution, Affinity isolated antibody
- 82897 **Vitamin B<sub>12</sub> Assay Medium**  
*BioChemika*, for microbiology
- 59924 **Polysorbate 80**  
Polyoxyethylenesorbitan monooleate  
Polysorbatum 80  
Tween® 80  
MDL number: MFCD00082107, 9005-65-6  
Ph Eur
- 65698 **TWEEN® 20**  
Polyethylene glycol sorbitan monolaurate  
Polyoxyethylenesorbitan monolaurate  
MDL number: MFCD00165986, 9005-64-5
- W29,170-6 **Tween® 80**  
Polyoxyethylenesorbitan monooleate  
MDL number: MFCD00082107, 9005-65-6
- W29,150-1 **Tween® 20**  
Polyoxyethylene sorbitanmonolaurate  
MDL number: MFCD00165986, 9005-64-5
- 46,690-5 **Tween® 20 solution**  
Polyoxyethylenesorbitan Monolaurate  
MDL number: MFCD00165986, 9005-64-5  
72 wt. % in water
- 37,425-3 **Tween® 60**  
Polyoxyethylenesorbitan Monostearate  
Polyoxyethylene(20) sorbitan monostearate  
Tween® 61  
MDL number: MFCD00165348, 9005-67-8  
Average M<sub>n</sub> ~1,312
- 38,890-4 **Tween® 85**  
Polyoxyethylenesorbitan Trioleate  
Polyoxyethylene(20) sorbitan trioleate  
Tween® 85  
MDL number: MFCD00082107, 9005-70-3  
Average M<sub>n</sub> ~1,839
- 27,436-4 **Tween® 80**  
Polyoxyethylenesorbitan monooleate  
MDL number: MFCD00082107, 9005-65-6  
Average M<sub>n</sub> ~1,310

- Ⓐ 27,434-8 **Tween® 20**  
Polyoxyethylene sorbitanmonolaurate  
MDL number: MFCD00165986, 9005-64-5  
Average M<sub>n</sub> ~1,228
- Ⓐ 27,435-6 **Tween® 40**  
Polyoxyethylenesorbitan Monopalmitate  
polyoxyethylene(20) sorbitan monopalmitate  
TWEEN® 40  
MDL number: MFCD00165345, 9005-66-7  
Average M<sub>n</sub> ~1,284
- Ⓑ 95754 **Polysorbat 60**  
Polysorbatum 60  
Tween® 60  
, 9005-65-6  
Ph Eur
- ✿ PQ0101 **ProteoQwest™ Colorimetric Western Blotting Kit, TMB Substrate**  
(for Mouse Monoclonal IgG Antibodies)

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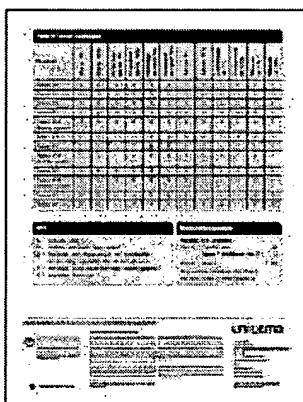
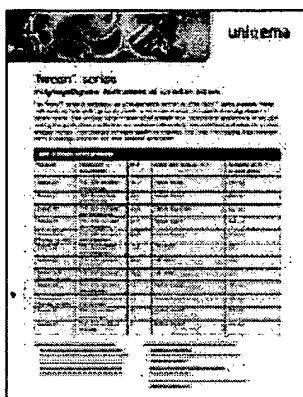
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## Tween™ series

Polyoxyethylene derivatives of sorbitan esters



## Tween™ series

Polyoxyethylene derivatives of sorbitan esters

The Tween™ series of surfactants are polyoxyethylene derivatives of the Sp series products. Tween surfactants are hydrophilic, generally soluble or disp water, and soluble in varying degrees in organic liquids. They are used for O/W emulsification, dispersion or solubilization of oils, and wetting. Freque Tween surfactants are combined with similarly numbered Span surfactants t emulsion stability. These products are widely used in personal care, fiber fin cleaning, crop protection , paints & coatings, adhesives and other industrial applications.

Table 1: Tween series products

Product	Chemical description	HLB	Color and form at 25°C <sup>(1)</sup>	Viscosity at 2 or pour point <sup>(2)</sup>
Tween 20	POE (20) sorbitan monolaurate	15.7	Yellow liquid	330 cs
Tween 21	POE (4) sorbitan monolaurate	13.3	Yellow liquid	600 cs
Tween 40	POE (20) sorbitan monopalmitate	15.6	Yellow liquid/gel	500 cs
Tween 60	POE (20) sorbitan monostearate	14.9	Yellow liquid	650 cs
Tween 60K (Kosher grade)	POE (20) sorbitan monostearate	14.0	Yellow liquid	650 cs
Tween 61	POE (4) sorbitan monostearate	9.6	Tan solid	38°C
Tween 65	POE (20) sorbitan tristearate	10.5	Tan solid	33°C
Tween 65K (Kosher grade)	POE (20) sorbitan tristearate	10.5	Tan solid	33°C
Tween 80	POE (20) sorbitan monoleate	15	Yellow liquid	425 cs
Tween 80K (Kosher grade)	POE (20) sorbitan monoleate	15	Yellow liquid	425 cs
Tween 81	POE (5) sorbitan monoleate	10	Amber liquid	450 cs
Tween 85	POE (20) sorbitan trioleate	11	Amber liquid	315 cs

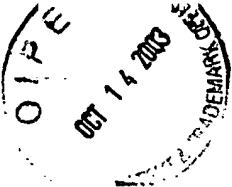
(1) Color and Form at 25°C determined visually. An approximation of color intensity is indicated by with Gardner standards as follows:

Colorless-light yellow < 1 - 2 Gardner units

Yellow 2 - 7 Gardner units

Amber 7 - 10 Gardner units

(2) Viscosity: ASTM-D-445-53T method. Pour point: ASTM-D-97-47 method. These products are : globally and have the following inventories:



S.N. 09/832,211

Reply Brief

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\* an envelope addressed to: Assistant Commissioner for Patents, \*  
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\* Medina \*  
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\* Robin A. McCormick 10/8/03 \*  
\* (Signature) (Date)  
\*\*\*\*\*